ORIGINAL COPY

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

MAYOR MOHAJERAN K. BALAYMAN, MUNICIPALITY OF PANDAG, PROVINCE OF MAGUINDANAO DEL SUR
Petitioners,

versus

BANGSAMORO AUTONOMOUS REGION IN MUSLIM MINDANAO (BARMM) GOVERNMENT REPRESENTED BY CHIEF MINISTER AHOD EBRAHIM; MINISTRY OF INTERIOR AND LOCAL GOVERNMENT REPESENTED BY MINISTER NAGUIB G. SINARIMBO; KHADAFEH G. MANGUDADATU
Respondents.

x--x

G.R. NO. 269164

PETITION FOR CERTIORARI AND PROHIBITION WITH URGENT PRAYER FOR PRELIMINARY MANDATORY INJUNCTION AND TEMPORARY RESTRAINING ORDER WITH MOTION FOR CONDUCT OF SPECIAL RAFFLE

COMMENT

COME NOW, public respondents Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) Government represented by the *interim* Chief Minister Ahod B. Ebrahim (ICM Ebrahim) and the Ministry of Interior and Local Government (MILG) represented by Minister Sha Elijah Dumama-Alba, through the Bangsamoro Attorney General's Office (BAGO), and unto this Honorable Supreme Court, most respectfully submit this Comment and state that:

1. On January 11, 2024, the Office of the Chief Minister (OCM) received a copy of a Resolution dated October 03, 2023 issued by this Honorable Supreme Court,[1] directing the respondents to submit a Comment within ten (10) days from receipt thereof or until January 22, 2024, considering that the last day falls on a Sunday, a non-working day.

[1] A machine copy of Resolution dated October 3, 2023 is herein attached as ANNEX "1".

2. On January 19, 2024, public respondents BARMM Government and the MILG, through the BAGO, filed a Motion for Extension of Time to File Comment of even date before this Honorable Supreme Court, praying for an extension of thirty (30) days from the original expiration thereof or until February 20, 2024 within which to file its Comment. Hence, this Comment is filed on time.

3. The public respondents may be served with summons and all court orders through the BAGO, being the chief legal counsel of the Bangsamoro Government pursuant to Section 4, Article II of the Bangsamoro Autonomy Act No. 5, at its address at 2/F OCM Building, Bangsamoro Government Center, Governor Gutierrez Avenue, Rosary Heights VII, Cotabato City.

PREFATORY STATEMENT

Regional autonomy, as it is contemplated in the 1987 Constitution, is regarded as an "epoch-making, Constitution-based project for achieving national unity in diversity."[2] The inclusion of the mandate for regional autonomy in the fundamental law is still hailed as one of the most notable hallmarks of the 1987 Constitution.

A reading of the deliberations of the framers of the 1987 Constitution reveals that the purpose or main driving force for the creation of autonomous regions is two-fold:

> (1) To achieve a more efficient governance framework and administration or delivery of social services and bring equitable development and progress to the regions that have been left behind; and
>
> (2) To provide a platform for a positive measure of self-determination in response to the clamor for peace in war-torn areas of the country.

As to the first, the proposal for autonomy intended to effect, to a certain extent, changes to the "overcentralized system of government," which is perceived to be a colonial legacy.[3] The autonomy model was viewed as the best approach

---

[2] *Disomangcop v. DPWH Secretary*, G.R. No. 149848, 25 November 2004.

[3] III RECORD OF THE CONSTITUTIONAL COMMISSION (August 11, 1986). At 172-73, where the raison d'etre for the creation of autonomous region was discussed, thus:

> **MR. OPLE:**... It is said that this is a colonial legacy, the overcentralized system of government that denies the role of initiative at the local levels. It is, of course, understandable that a colonial power would first of all annihilate

for governance and administration in the areas to be covered by the autonomous regions owing to the uniqueness and peculiarities of the autochthonous institutions of governance and public administration that have been extant in these communities since time immemorial; pre-dating the insistence on over-centralization that defined the rigidly unitary frame of governance.

The second aspect of the creation of autonomous regions is to provide a platform for a positive measure of self-determination, in the form of a right to demand autonomy, for minority groups, within the framework of the State, or as an "alternative to secession."[4] As one constitutional commission member elucidated:

> MR. OPLE: ...Throughout modern history, Madam President, autonomy for certain regions within the framework of the nation- state has meant a constructive alternative to secessionist aspirations. xxx

Appreciated in this sense, autonomous regions were introduced in our constitutional system to address the call of "certain regions with unique cultural, historic, social and even religious bonds that have been placed in a position of inferiority relative to dominant groups in society to have the right to demand autonomy, a measure of self-determination within the larger political framework of the nation-state."[5] In particular, the proposal for regional autonomy in Muslim Mindanao and the Cordilleras was inspired by events in modern history, where autonomy within the framework of national sovereignty is considered a "constructive alternative to secessionist aspirations."[6]

When the sovereign Filipino people ordained the mandate for regional autonomy in the fundamental charter, it carried with it the solemn affirmation of the need for and essential purposes of having autonomous regions in Muslim Mindanao and the Cordilleras as vital parts of a multi-tiered government structure. This is the very Government that the sovereign Filipino ordained as the embodiment of their ideals and aspirations in order to secure the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace.[7]

---

the autonomy of local units in order to ensure a foolproof security against potential rebellions or disturbances.

[4] III RECORDS, *supra*, note 3 at 173.

[5] *Id.*

[6] *Id.* In this second sense, the creation of autonomous regions was also considered by the framers to address the need for a full implementation of the 1976 Tripoli Agreement.

[7] CONST., *Preamble*

And by regional autonomy, the framers of the Constitution intended "meaningful and authentic regional autonomy."[8] It is that measure of self-government which allows the people of the region the widest latitude to determine what is best for their growth and development with minimum interference from the national government. As such, even the powers of the President and of the Congress have been interpreted to be limited or restricted with respect to autonomous regions in order to adhere to the mandate on regional autonomy, *viz.*:

> To this end, Section 16, Article X limits the power of the President over autonomous regions. In essence, the provision also curtails the power of Congress over autonomous regions. Consequently, Congress will have to re-examine national laws and make sure that they reflect the Constitution's adherence to local autonomy. And in case of conflicts, the underlying spirit which should guide its resolution is the Constitution's desire for genuine local autonomy. [9]

While territorial units outside Muslim Mindanao and the Cordilleras also enjoy local autonomy, the framers intended to draw a distinction between the extent of autonomy granted to local governments, on one hand, and autonomous regions, on the other, to which general provisions for local governments apply, but which may be further qualified (not necessarily in the sense of being "restricted") by the provisions on autonomous regions.

The BARMM was established through the enactment of Republic Act (RA) No. 11054, otherwise known as the "Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao," (hereinafter referred to as Bangsamoro Organic Law) on July 27, 2018, with the end view of "establishing a political entity, provide for its basic structure of government in recognition of the justness and legitimacy of the cause of the Bangsamoro people and the aspirations of Muslim Filipinos and all indigenous cultural communities in the Bangsamoro Autonomous Region in Muslim Mindanao to secure their identity and posterity, allowing for meaningful self-governance within the framework of the Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines."[10]

The Bangsamoro Government operates as a regional autonomous government within the spirit and contemplation of Article X of the 1987 Constitution.

---

[8] III RECORDS, *supra.*
[9] *Supra,* note 2.
[10] RA 11054, Art. I, Sec. 3.

In the sponsorship speech of Senator Juan Miguel "Migz" Zubiri for the Senate Bill No. 1717 (Committee Report No. 255), that eventually became RA 11054, he elucidated the motivational force behind the enactment of the said bill, to wit:

> The aspiration for self-determination can be regarded to have started or resurfaced during the 1970 when the Moro National Liberation Front (MNLF), a splinter group of the Muslim Independence Movement formed by Nur Misuari, sought an independent Islamic state or autonomous region for the Filipino Muslim minority. From then on, the MNLF had metamorphosed into several organizations and groups, including the Moro Islamic Liberation Front (MILF) founded by Hashim Salamat, principally seeking an independent Islamic state in Muslim Mindanao. And the rest, as they say, is history. The Muslim secessionist movement is now regarded as the second oldest internal conflict in the world.
>
> What are the costs of this internal conflict? Since the fighting between the Philippine government and Moro rebels started in 1970s, a World Bank study had roughly estimated the direct economic costs of the conflict from 1970 - 2001 to be at $2 billion to $3 billion. Aside from the direct economic costs are the heavy human and social toll of the conflict. The same study estimated that the death toll since 1970 is at 120,000 people—all Filipino—and unaccounted numbers of wounded and disabled. Internally displaced people at two million, of whom one million in 2000 alone during the "all out-war," not to mention the displaced families now in Marawi City.
>
> We have attempted twice as legislators, through the enactment of RA 6734 or the Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao and the subsequent amendatory law, RA 9054 or an Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao. Unfortunately, according to at least two administrations, and a former president, "it was a failed experiment." I believe that, if we consider those two laws a failure, they failed because there was really no full autonomy given to our Muslim brothers in Mindanao, especially on the fiscal aspect. If our Muslim brothers and sisters have had an annual pilgrimage to Mecca and Medina for their hajj to purify their souls, so too the ARMM leaders for their annual pilgrimage to Malacanang and Congress to beg for funds from the so-called imperial Manila, funds that would otherwise accrue to them automatically that they can allocate based on the needs and development plans for their people. That and the other important aspects heavily contributed to the failure of the previous autonomous government in Muslim Mindanao.

> Which brings me to the proposed measure on the floor. This new Bangsamoro Basic Law **gives greatest latitude, if not full autonomy, to the Bangsamoro government which will be established, to assert their political and economic self-determination and pursue development programs for their people according to their peculiar historical, cultural, religious and national identities.** xxx
>
> This will be a government of their own, a parliamentary government with the chief minister as head of government and supported by a Cabinet. The parliamentary system of government is closer to their tradition as the parliament mirrors their traditional leadership such as the Ruma Bichara (Council) of the Sultanate of Sulu and the Atas Bichara of the Sultanate of Maguindanao.[11]

Indeed, the Bangsamoro Organic Law provides that the BARMM, in the exercise of its right to self-governance, is free to pursue its political, economic, social, and cultural development.[12] In *Disomangcop,* the Supreme Court had occasion to tackle the constitutional mandate for regional autonomy *viz:*

> The need for regional autonomy is more pressing in the case of the Filipino Muslims and the Cordillera people who have been fighting for it. Their political struggle highlights their unique cultures and the unresponsiveness of the unitary system to their aspirations. xxx
>
> Perforce, regional autonomy is also a means towards solving existing serious peace and order problems and secessionist movements. xxx
>
> Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government.
>
> The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business. This is achieved through the establishment of a special governance regime for certain member communities who choose their own authorities from within the community and

---

[11] Journal Session No. 63, 17th Congress, Second Regular Session, February 28, 2018.
[12] RA 11054, Art. IV, Sec. 2.

> exercise the jurisdictional authority legally accorded to them to decide internal community affairs.[13] xxx

Verily, autonomous regions like the BARMM enjoy constitutionally-granted political autonomy in cognizance of its right to self-government, to be self-reliant, and to improve its administrative and technical capabilities. Part and parcel of this political self-governance is the authority to administer its own administrative and local governance structure.

Thus, in Section 10, Article VI of RA 11054, it is provided that:

> **Section 10.** *Bangsamoro Government and its Constituent Local Government Units.* - The authority of the Bangsamoro Government to regulate the affairs of its constituent local government units shall be guaranteed in accordance with this Organic Law and a Bangsamoro Local Government Code to be enacted by the Parliament. The privileges already enjoyed by local government units under Republic Act No. 7160, otherwise known as the "*Local Government code of 1991,*" as amended, and other existing laws shall not be diminished. xxx

The full understanding of the import of the afore-cited provision can be appreciated further by taking a look at the deliberations of the Senate for the enactment of the Bangsamoro Organic Law, *viz.:*

> Senator Recto asked whether the "powers" given to the Bangsamoro are devolved powers from the national government consistent with decentralization. Senator Zubiri replied in the affirmative.
>
> Senator Drilon agreed, noting that Section 17 of Article X, clearly shows that all the powers of the State belong to the national government, but they could be devolved to political units by law and by the Constitution. Senator Recto said that in public administration, there is the realization that the political subdivision given these devolved powers can exercise them more efficiently and effectively. Senator Drilon agreed.
>
> Asked by the Chair for his opinion on the issue. Senator Pimentel stated that the discussions were consistent with the meaning of devolution which is an act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities.

---

[13] *Supra,* note 2.

Consistent with the foregoing, the MILG was established to exercise general supervision over the constituent local government units of the Bangsamoro Government, and ensure public safety and disaster preparedness, local autonomy, decentralization, and community empowerment.[14] In *Joel Bito-onon v. Hon. Judge Nelia Yap Fernandez,* the Supreme Court explained general supervision as the power of mere oversight, *viz.:*

> Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. Supervising officers merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act.[15]

It is against this all-important contextual backdrop that the following disquisitions are being prayed for to be appreciated and resolved.

STATEMENT OF ANTECEDENT FACTS

4. On May 9, 2022, during the 2022 National and Local Elections, petitioner Mohajeran K. Balayman and private respondent Khadafeh G. Mangudadatu were candidates for the position of Mayor of the Municipality of Pandag, Maguindanao del Sur.

5. On May 10, 2022, after the canvassing of the votes, private respondent Mangudadatu was proclaimed as the elected Mayor of Pandag, Maguindanao del Sur.

6. Aggrieved, the petitioner filed an Election Protest on May 23, 2022, challenging the results of the election before the Regional Trial Court (RTC), 12th Judicial Region. The said protest was docketed as EP SA 16-2022 and was raffled to Branch 15, Shariff Aguak, Maguindanao, of the aforementioned RTC.

---

[14] BAA 13, *"Bangsamoro Administrative Code,"* Book VI, Title VIII, Chapter 1, Sec. 2.
[15] G.R. No. 139813, January 31, 2001.

7. The RTC issued summons to private respondent Mangudadatu requiring him to file a verified answer within five (5) calendar days from receipt. However, Mangudadatu allegedly failed to file his answer on time and was declared in default on June 02, 2022.

8. On June 13, 2022, private respondent Mangudadatu filed a Motion for Reconsideration or To Lift Order of Default which was denied by the RTC.

9. On June 20, 2022, Mangudadatu elevated the Order of Default to the Commission on Elections (COMELEC) by filing a Petition for Certiorari and Prohibition/Injunction docketed as SPR 001-22, which was raffled to the COMELEC Special First Division. The COMELEC Special First Division issued a 60-day Temporary Restraining Order (TRO) on July 19, 2022 which caused the RTC to suspend the protest proceedings.

10. Meanwhile, on July 12, 2022, public respondent MILG through then Minister Naguib G. Sinarimbo issued Memorandum Circular No. 119, series of 2022 instructing all Provincial/City Directors, City Local Government Operation Officers/Municipal Local Government Operations Officers of MILG as well as all the Local Government Units (LGUs) within the jurisdiction of the BARMM that only the office of the Minister of the MILG is authorized to cause the issuance of all the Certificates of Recognition for elected and appointed city and municipal officials, in relation to an earlier Memorandum dated May 10, 2022 on the "Guidelines for the Issuance of Certificate of Recognition for Newly-Elected Provincial, City and Municipal Officials."[16]

11. Subsequently, the RTC resumed the election protest proceedings upon the expiration of the 60-day TRO. During the resumption of proceedings in the RTC, the private respondent was denied participation on the reasoning that his status as being in default has not been lifted.

12. The RTC rendered Judgment dated October 14, 2022 in favor of petitioner finding that Balayman obtained the plurality of valid votes cast and correspondingly declared the petitioner as the elected Mayor of Municipality of Pandag, Maguindanao.

13. Petitioner Balayman filed a Motion for Execution of the Judgment dated October 14, 2022 in accordance with Section 11, Rule 14 of AM. No. 10-4-1-SC.

[16] A copy of the "Guidelines" is herein attached as ANNEX "**2**".

14. Respondent Mangudadatu, on the other hand, filed a Notice of Appeal of the Judgment dated October 14, 2022 pursuant to Section 8, Rule 14 of AM No. 07-4-1-SC.

15. On October 19, 2022, the RTC granted the Motion for Execution filed by petitioner Balayman while the Notice of Appeal of private respondent Mangudadatu was denied due course.

16. On October 20, 2022, the COMELEC Special First Division acting on the petition docketed as SPR 001-22 issued a Writ of Preliminary Injunction in favor of private respondent Mangudadatu.

17. On December 15, 2022, public respondent MILG issued a Certificate of Recognition[17] in favor of private respondent Mangudadatu, recognizing him as the Mayor of Pandag, Maguindanao del Sur.

18. Thereafter, the COMELEC Special First Division rendered its Resolution dated January 17, 2023 granting private respondent Mangudadatu's Petition for Certiorari and Prohibition/Injunction.

19. Petitioner Balayman filed his Motion for Reconsideration before the COMELEC *En Banc* assailing the above Resolution dated January 17, 2023 issued by the COMELEC Special First Division.

20. On April 04, 2023, the COMELEC *En Banc* rendered a Resolution granting Petitioner Balayman's Motion for Reconsideration and reversed the Resolution dated January 17, 2023 promulgated by COMELEC Special First Division.

21. In the same April 04, 2023 COMELEC *En Banc* Resolution, Commissioner Ernesto Ferdinand P. Maceda, Jr. noted in his Separate Opinion that based on the records of the Electoral Adjudication Department of the COMELEC, an appeal was filed by private respondent Mangudadatu relative to the Election Protest case EP SA-16. This appeal, with docket number EAC No. 058-2022, is pending before the COMELEC.

22. Subsequently, private respondent Mangudadatu filed a Petition for Certiorari with prayer for Temporary Restraining Order/ Status Quo Ante Order and/or Preliminary Injunction docketed as G.R. No. 266443

[17] A copy of the "Certificate of Recognition" dated December 15, 2022 is herein attached as ANNEX "**3**".

before the Honorable Supreme Court questioning the above-said COMELEC *En Banc* Resolution.

23. Meanwhile, the COMELEC issued Certificate of Finality dated May 12, 2023 declaring the April 04, 2023 Resolution as Final and Executory.

24. Thereupon, a Certificate of Recognition issued by DILG Undersecretary Margarita N. Gutierrez allegedly circulated, purportedly recognizing Balayman as the legitimate Mayor of Pandag.

25. On May 12, 2023, the petitioner wrote to the public respondent MILG requesting for a Certificate of Recognition to be issued in his name as the Mayor of Pandag, Maguindanao del Sur.[18]

26. On May 16, 2023, public respondent MILG through then Minister Sinarimbo issued a letter[19] addressed to Jose R. Tenecio, Jr., Officer-in-Charge (OIC) Manager of Land Bank Buluan, Maguindanao Branch, in reply to the letter of inquiry dated May 15, 2023 addressed to the MILG in relation to the situation and developments that took place in the Municipality of Pandag, Maguidanao del Sur.

27. On August 07, 2023, prompted by information circulating that petitioner Balayman has been granted authority to inspect infrastructure projects of the Bangsamoro Government in the municipality of Pandag, Maguindano del Sur, Chief of Staff Alvin-Yasher K. Abdulgafar of the OCM wrote a letter[20] on even date addressed to petitioner Balayman clarifying that no such authority was granted by the OCM and further stating, *viz:*

> xxx The reply dated August 3, 2023, by the undersigned was clear that your request will be forwarded to the proper ministries concerned for appropriate action. To interpret the said letter as granting authority is completely misleading and untrue.
>
> Furthermore, we would like to respectfully make it clear that that *(sic)* the reply letter should not be taken as an acknowledgement of your claim of mayorship for the municipality of Pandag, Maguindanao del Sur. As public

---

[18] A copy of the Letter addressed to the MILG dated May 12, 2023 is herein attached as ANNEX "4".
[19] Annex "I" in the Petition.
[20] Annex "L" in the Petition.

servants, we are simply duty-bound to act and reply to letters received by our office, regardless of origin.

Lastly, I would like to state that together with the rest of the Bangsamoro Government, I firmly stand with the position of the Ministry of the Interior and Local Government (MILG) on the contested mayorship of Pandag Municipality. You can be assured that the Bangsamoro Government is committed to ensuring that the democratic processes are followed and that the rights of all parties involved are respected. xxx

28. Meanwhile, the Civil Service Commission (CSC) for BARMM also wrote a communication letter dated August 24, 2023 to petitioner Balayman in response to the letter sent by the latter on August 17, 2023 pertaining to the legitimate Mayor of Municipality of Pandag, Maguindanao del Sur. The CSC for BARMM expressed their predicament to defer to the position of other government offices as primary implementers (MILG) for uniformity and consistency considering that there are two competing personalities claiming to be in lawful possession of the chief executive office of LGU-Pandag, Maguindanao del Sur.

29. On August 25, 2023, respondent Minister Sinarimbo issued anew a Certificate of Recognition[21] to private respondent Mangudadatu as the incumbent Municipal Mayor of the Municipality of Pandag, Maguindanao del Sur.

30. Meanwhile, Bangsamoro Autonomy Act (BAA) No. 49, otherwise known as the "Bangsamoro Local Governance Code of 2023," was enacted into law by the Bangsamoro Transition Authority (BTA) Parliament on September 28, 2023 and took effect on December 26, 2023.

31. BAA 49 has amended provisions of BAA 13, otherwise known as the "Bangsamoro Administrative Code," insofar as there are conflicting provisions therein.

32. On December 7, 2023, MP Atty. Sha Elijah Dumama-Alba replaced Atty. Naguib Sinarimbo as the new Minister of the MILG.[22]

---

[21] A copy of the "Certificate of Recognition" dated August 25, 2023 is herein attached as ANNEX "**5**".

[22] A copy of the Designation dated December 7, 2023 is herein attached as ANNEX "**6**".

ARGUMENTS

Procedural Arguments

I. The petitioner has no *locus standi* to file the instant petition.

II. The petition failed to justify exemption from the doctrine of the hierarchy of courts on the basis of transcendental importance.

III. The petition failed to meet the other requirements for the Court to exercise its power of judicial review:

i. There is no actual justiciable controversy as the petition fails to allege actual and direct conflict or contrariety of legal rights.

ii. The constitutional questions raised are not the *lis mota* of the case.

IV. The petitioner committed forum shopping by filing the instant petition, in view of the pendency of the electoral protest and related proceedings covering the same factual and legal antecedents.

V. The petitioner is estopped from assailing the constitutionality of the acts, issuances, and policy complained of. Thus, the Court must exercise the policy of constitutional avoidance.

i. The petitioner has sought to avail himself of the benefits of the very policy and issuance he is questioning on constitutional grounds, constituting estoppel, which is one of the pillars of limitation of judicial review.

VI. Petitioner cannot invoke the Honorable Supreme Court's expanded *certiorari* jurisdiction:

i. There is no grave abuse of discretion on the part of public respondents. Thus, certiorari and prohibition will not lie against public respondents BARMM Government and MILG.

ii. There exists an appeal or other speedy and adequate remedy in the ordinary course of law.

Substantive Arguments

VII. The claim of petitioner that he is the legitimate Mayor of Pandag, Maguindanao del Sur is misplaced because the winner of the mayoralty race in Pandag, Maguindanao del Sur is not yet settled.

VIII. The public respondent MILG is not deciding election contests but merely enforcing its mandate in overseeing the affairs of the constituent local government, as provided under the law.

IX. The powers granted to the Bangsamoro Government encompass a wide array of areas of governance, pursuant to the constitutional policy on regional autonomy.

X. Article VI, Section 10 of RA 11054 regarding the authority of the BARMM Government to regulate the affairs of constituent local government units is valid and constitutional.

XI. The establishment of MILG in the BARMM and the provisions for its mandates, powers, and functions in the Bangsamoro Administrative Code are valid and constitutional.

XII. Petitioner is not entitled to a Writ of Preliminary Mandatory Injunction and Temporary Restraining Order (TRO).

i. Petitioner does not possess a clear and unmistakable right violated by the questioned acts and issuances of the respondents.

ii. Petitioner also failed to prove that he will sustain grave and irreparable injury from the questioned act or issuance.

iii. The issuance of a TRO or a writ of preliminary injunction would operate as a prejudgment of the case.

DISCUSSION

I. The petitioner has no *locus standi* to file the instant petition.

---

33. Petitioner Balayman has no legal standing to file the subject petition. Jurisprudence emphatically prescribes that a party may only come to court if he or she has legal standing.

34. In the case of *CREBA v. ERC and MERALCO,* the Honorable Supreme Court defined *locus standi, to wit:*

> Legal standing or *locus standi* refers to a party's personal and substantial interest in a case, **arising from the direct injury it has sustained or will sustain as a result of the challenged governmental action. Legal standing calls for more than just a generalized grievance.** The term "interest" means a material interest, an interest in issue affected by the governmental action, as distinguished from mere interest in the question involved, or a mere incidental interest. **Unless a person's constitutional rights are adversely affected by a statute or governmental action, he has no legal standing to challenge the statute or governmental action.**[23] (emphasis ours)

35. Clearly, the rule on *locus standi* requires that a party must have a direct and personal interest in the case. Petitioner must demonstrate that he has been, or is about to be, denied some right or privilege to which he is lawfully entitled, or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[24]

36. In the present case, petitioner Balayman failed to specifically allege any particular injury he has personally or directly sustained or will sustain in challenging the constitutionality of Article VI, Section 10 of RA 11054, the various provisions of BAA13 or the Bangsamoro Administrative Code, and the issuances, communications, and acts of the public respondents appurtenant thereto.

---

[23] *CREBA v. ERC and MERALCO,* G.R. No. 174697, July 8, 2010.
[24] *Brother Mariano "Mike" Z. Velarde v. Social Justice Society,* G.R. No. 159357, April 28, 2004.

37. In paragraph 16 of his petition, petitioner Balayman avers, in sweeping and general terms, that he *"on behalf of the people* (sic) *Municipality of Pandag, Province of Maguindanao del Sur has (1) personally suffered actual or threatened injury xxx".*

38. Such a vague, perfunctory, and confusing averment fails to convince that he is clothed with the requisite legal standing to file this petition.

39. The fact that the petitioner claims the same "on behalf of the people *(sic)* Municipality of Pandag" raises questions as to whether the supposed actual or threatened injury has been suffered by him personally or by the people of Pandag that he purports to speak for.

40. *Locus standi* calls for more than just a generalized grievance. It requires, especially if the case is assailing the constitutionality of a statute, the presence of "material interest", i.e., that level of interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[25] **There must be a present substantial interest and not a mere expectancy or a future, contingent, subordinate, or consequential interest.**[26]

41. In this petition, any "interest" on the part of the petitioner cannot be considered present. The petitioner's interest, if at all, is more properly characterized as contingent and subject to expectancy because his claim as the Mayor is not yet settled and still in dispute.

42. In *Galicto v. H.E. President Aquino III*, the Honorable Supreme Court had occasion to discuss the importance of establishing the requisite presence of the injury in relation to *locus standi* and the impact on the burden on the courts, to wit:

> It has been held that **as to the element of injury, such aspect is not something that just anybody with some grievance or pain may assert. It has to be direct and substantial to make it worth the court's time, as well as the effort of inquiry into the constitutionality of the acts of another department of government.** If the asserted injury is more imagined than real, or is merely superficial and insubstantial, then the courts may end up being importuned to decide a matter that does not really justify such an excursion into constitutional adjudication.[27] (emphasis ours)

[25] *Zabal, et al. v. Duterte, et. al.*, G.R. No. 238467, February 12, 2019.
[26] *Galicto v. H.E. President Aquino III*, 683 Phil 141, 171 (2012).
[27] *Id.*

43. Based on the foregoing, the petition should be dismissed on ground that petitioner Balayman failed to sufficiently demonstrate the presence of *locus standi.*

II. The petition failed to justify exemption from the doctrine of the hierarchy of courts on the basis of transcendental importance.

44. Petitioner Balayman claims that his petition is sufficient to invoke exemption to the doctrine of hierarchy of courts on grounds of transcendental importance in view of the tremendous public interest and concern of the people of the BARMM with regard to the public respondents' issuance, acts, and communications.

45. Petitioner's contention is unfounded.

46. A reading of the petition would show a clear lack of sufficient or proper allegation as to the requirements for the waiver of the doctrine of hierarchy of courts via the transcendental importance doctrine.

47. As held in the case of *Anti-Trapo Movement of the Philippines v. Land Transportation Office, viz:*

> "There being no doctrinal definition of transcendental importance, **the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.**
>
> Whether an issue is of transcendental importance is determined on a case-to-case basis. **A claim of transcendental importance must be backed by proper allegations.** Its plain invocation does not suffice for this Court to brush aside procedural technicalities.[28] (emphasis ours)

---

[28] *Anti-Trapo Movement of the Philippines v. LTO,* G.R. No. 231540, June 27, 2022.

48. The Honorable Court has laid down the determinants of transcendental importance, which now serve as a guide in determining whether a claim thereof shall be given credence in the landmark case of *Franciso v. House of Representatives.*[29] **To repeat, a mere invocation of transcendental importance in the pleading is not enough for this Honorable Court to set aside procedural rules.**[30]

49. In this case, the petition's invocation of the exemption to the doctrine of hierarchy of courts anchored on supposed "tremendous public interest and concern of the people of the BARMM" fails to meet any of the determinants of transcendental importance laid down in *Francisco.*

50. Nowhere in the petition does the petitioner aver (1) the character of any funds or other assets involved in the case; nor (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondents; nor (3) the lack of any other party with a more direct and specific interest in raising the questions being raised as to elevate the case to the level of transcendental importance.

51. It is quite apparent that petitioner fails miserably to establish the existence of transcendental importance to justify the circumvention of the doctrine of hierarchy of courts.

52. Significantly, the constitutional challenge brought up by the petitioner in this case is not based on a clear disregard of a constitutional or statutory prohibition by the public respondents. This petition does not point to, nor does it invoke, any express prohibition in the constitution or under any statute to support his charge of unconstitutionality against the policy, acts, issuances, and communications of the public respondents.

53. A scrutiny of the petition reveals that there is nothing but a mere general averment of "public interest and concern", unsubstantiated and not backed up by proper allegations, whereupon the petitioner rests his claim for exception from the doctrine of hierarchy of courts based on transcendental importance.

54. The hierarchy of courts is generally enforced unless special, extraordinary, or compelling reasons justify waiver thereof. This practical rule affords the Court the focus it needs for more fundamental and more essential tasks that the Constitution has assigned to it. A failure

---

[29] *Franciso v. House of Representatives*, G.R. No. 160261, 460 Phil. 830 (2003).

[30] In the matter of: Save the Supreme Court Judicial Independence Against the Abolition of the Judiciary Development Fund (JDF) and Reduction of Autonomy, UDK-15143, January 21, 2015.

to observe the hierarchy of courts warrants the dismissal of a petition violating the same.[31]

55. Considering the above discussions, the petition clearly failed to pass the test in qualifying for the liberal application of the doctrine of hierarchy of courts based on the transcendental importance doctrine.

56. Therefore, the petition must be dismissed on grounds of petitioner's failure to establish the doctrine of transcendental importance as grounds for the non-observance of the rule on hierarchy of courts.

III. The petition failed to meet the other requirements for the Court to exercise its power of judicial review.

i. There is no actual justiciable controversy as the petition fails to allege actual and direct conflict or contrariety of legal rights.

57. The Honorable Supreme Court has held that the power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution.[32]

58. The power of the courts is derived from Article VIII, Section 1 of the 1987 Constitution which defines and delineates the judicial power of the courts, to wit:

> **SECTION 1.** The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

---

[31] *Heirs of Derecho v. Duro,* G.R. No. 240295, 27 Mar 2019.
[32] *Garcia v. Executive Secretart,* G.R. No. 157584, April 2, 2009.

59. As discussed by the Honorable Supreme Court in several cases, the power of judicial review is subject to limitations, *to wit:*

> For a court to exercise this power, certain requirements must first be met, namely:
>
> (1) an actual case or controversy calling for the exercise of judicial power;
>
> (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
>
> (3) the question of constitutionality must be raised at the earliest possible opportunity; and
>
> (4) the issue of constitutionality must be the very *lis mota* of the case.[33]

60. In this case, the petition fails to satisfy the very first of these requirements, that is, the existence of an actual case or controversy calling for the exercise of judicial power.

61. In the case of *Garcia v. Executive Secretary,* the Honorable Supreme Court provides for the definition of an actual case or controversy, to wit:

> **An actual case or controversy is one that involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution;** the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Stated otherwise, it is not the mere existence of a conflict or controversy that will authorize the exercise by the courts of its power of review; more importantly, the issue involved must be susceptible of judicial determination.[34] (emphasis ours)

62. To establish an actual case, the allegations of the parties must clearly demonstrate that there is "contrariety of rights."[35] In asserting a contrariety of legal rights, the party availing of the remedy must demonstrate that the law is so contrary to their rights that there is no interpretation other than that there is a factual breach of rights. **No**

---

[33] *Id.*

[34] *Id.*

[35] *Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. v. Senate,* G.R. Nos. 184635 & 185366, June 13, 2023.

demonstrable contrariety of legal rights exists when there are possible ways to interpret the provision of a statute, regulation, or ordinance that will save its constitutionality. In other words, the party must show that the only possible way to interpret the provision is one that is unconstitutional.[36]

63. In this case, petitioner Balayman fails to demonstrate contrariety of legal rights in mounting his constitutional challenge because there are ways of interpreting the questioned provision of the laws, issuances, and acts that would lean in favor of their constitutionality.

64. In fact, petitioner's stretched and baseless reading of the constitution, juxtaposed with the laws, issuances, and acts of public respondents, is in itself insufficient to establish contrariety of legal rights - enough to present a valid and actual case or controversy.

65. In this petition, the petitioner posits that the powers conferred in the Constitution to autonomous regions such as the BARMM is limited to economic, cultural, and social aspects of governance only.

66. It must be noted that petitioner's restrictive interpretation of the powers of autonomous regions constitutes a key premise whereupon he anchors his constitutional challenge against the questioned provisions of the Bangsamoro Organic Law, the Bangsamoro Administrative Code, and the issuances of the public respondent MILG.

67. As will be shown in detail below in the substantive discussion of the arguments, this restrictive interpretation of the petitioner is utterly bereft of merit and deserves scant consideration.

68. A reading of the provisions of Article X, Sections 15 to 21 of the 1987 Constitution, taken together with the clear intent of the framers of the fundamental law, and the various pronouncements of the Honorable Supreme Court relative to the scope and extent of regional autonomy, all unmistakably affirm that an autonomous region such as the BARMM is well clothed with competence to cover a wide array of aspects of governance – from the political, civil, economic, cultural, and social – within the framework of the Constitution and the national sovereignty as well as territorial integrity of the Republic.

---

[36] *Id.*

69. The following discussion of the Supreme Court in the case of *Disomangcop* elucidating on the extent and nature of mandate of regional autonomy, citing the intent of the framers of the Constitution, succinctly encapsulates the abovementioned, thusly:

> The aim of the Constitution is to extend to the autonomous peoples, the people of Muslim Mindanao in this case, the right to self-determination—a right to choose their own path of development; **the right to determine the political, cultural and economic content of their development path within the framework of the sovereignty and territorial integrity of the Philippine Republic.** Self-determination refers to the need for a political structure that will respect the autonomous peoples' uniqueness and grant them sufficient room for self-expression and self-construction.[37] (emphasis ours)

70. On this score alone, it is apparent that the petition failed to show a clear and convincing contrariety of legal rights as the challenged provisions of the laws, issuances, and acts admit of an interpretation that favor constitutionality.

71. In addition, it is a settled rule that for a party to establish an actual case as to warrant the exercise of the power of judicial review, the party challenging the governmental act must show actual facts showing direct injury.[38]

72. Here, the petitioner does not aver any facts that shows the direct injury that he suffered due to the challenged laws, issuances, and acts on constitutional grounds. There is no mention of violations of his constitutional rights to due process or equal protection or other specific rights arising from the challenged laws, issuances, and acts of the public respondents.

73. The petitioner is also silent as to the direct injury that he suffered due to public respondent MILG's issuance of the challenged Memorandum, or when the communications like the questioned letter dated August 07, 2023[39] of the Chief of Staff of the OCM asserting his position to stand with MILG relative to the contested mayorship of the Municipality of Pandag, Maguindanao del Sur was written.

---

[37] *Disomangcop, supra,* note 2.
[38] *Supra,* note 35.
[39] Annex **"L"** in the petition.

74. Petitioner neither demonstrated how the questioned provisions of RA 11054 on the authority of BARMM Government to regulate the affairs of constituent LGUs and of the Bangsamoro Administrative Code on the creation and mandates of the MILG are so contrary to his rights that there is no other interpretation other than their unconstitutionality.

75. In fine, there is no demonstrable contrariety of legal rights that exists nor any factual showing of direct injury as to merit the presence of a justiciable controversy.

76. The rule is that "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."[40] Absent this, there is no case and controversy ripe for adjudication by the court.

77. Perforce, the exercise of judicial review on this ground must be stayed.

ii. The constitutional questions raised are not the lis mota *of the case.*

78. Herein petition grossly failed to establish that the issue of constitutionality that petitioner interposes is the very *lis mota* of the case so as to justify calling for the exercise of judicial review by the Court.

79. The meaning of *"lis mota"* is provided and established in jurisprudence, to wit:

> *Lis mota* is a Latin term meaning the cause or motivation of a legal action or lawsuit. The literal translation is "litigation moved." **Under the rubric of *lis mota*, in the context of judicial review, the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law.** The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined."[41] (emphasis ours)

---

[40] *Provincial Bus Operators Association of the Philippines v. DOLE,* G.R. No. 202275, July 17, 2018; citing *Philippine Association of Colleges and Universities v. Secretary of Education,* G.R. No. L-5279, October 31, 1955.
[41] *Venus Commercial Co., Inc. v. DOH,* G.R. No. 240764, November 18, 2021.

80. It is undisputed that the present case was instituted as an offshoot of a hotly contested mayoralty race between the petitioner Balayman and private respondent Mangudadatu.

81. In the instant petition, the petitioner raises as the foremost and primary issue before the Honorable Supreme Court the determination that he is the legitimate Mayor of the Municipality of Pandag.

82. Then the petition proceeds to mount constitutional challenges including calling for an interpretation of Article X, Section 20 of the 1987 Constitution on the extent of powers granted to autonomous regions, and questioning the constitutionality of provisions of RA 11054 or the Bangsamoro Organic Law and of BAA 13 or the Bangsamoro Administrative Code.

83. Yet delving into the aforementioned constitutional questions are not entirely pertinent for the resolution of the crux or main controversy interposed by the petition, which is the election contest and protest between the petitioner and the private respondent.

84. Evidently, the issues of constitutionality are not the *lis mota* of this case. The difficult constitutional questions are not the very cause or motivation for the instant petition.

85. The *lis mota* requirement means that the petitioner who questions the constitutionality of a law must show that the case cannot be resolved unless the disposition of the constitutional question is unavoidable. Consequently, if there is some other ground upon which the court may rest its judgment, that course should be adopted, and the question of constitutionality avoided.[42]

86. In this case, the resolution of the main cause or motivation of the petition relates to the determination of the disputed mayoralty post.

87. Hence, for the proper resolution of the matter at hand, the question on the constitutionality can be entirely avoided. Put differently, delving into the constitutionality of the assailed provisions of law is not essential to the disposition of the present petition.

---

[42] *Id.*

88. As held in *Macasiano vs. National Housing Authority*,

> It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented. xxx
>
> The constitutional challenge must be rejected for failure to show that there is an indubitable ground for it, not to say even a necessity to resolve it. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments.[43]

89. As herein petition does not meet the requirements of *lis mota* for the Honorable Court to exercise its power of judicial review, prudence dictates that the constitutional issues so raised should not be passed upon.

90. The constitutional challenges, as such, must be rejected.

IV. The petitioner committed forum shopping by filing the instant petition, in view of the pendency of the electoral protest and related proceedings covering the same parties, and factual and legal antecedents.

91. As discussed above, the crux of the controversy for resolution in this petition is the disputed electoral contest between the petitioner and the private respondent for Mayor of Pandag, Maguindanao del Sur. It is the main cause and motivation of this suit.

92. As such, determining the constitutional challenges brought in this petition must be avoided as they are not the *lis mota* of the case.

---

[43] *Macasiano vs. National Housing Authority,* G.R. No. 107921, July 1, 1993.

93. From the records, it is abundantly clear that there are proceedings relative to the election contest and the protests that were filed by and between the contestants for Mayor of Pandag.

94. This includes the appeal of private respondent Mangudadatu from the decision of the RTC filed with the COMELEC docketed as EAC No. 058-2022 as well as the Petition for Certiorari filed by private respondent Mangudadatu on the Resolution of the COMELEC *En Banc* with GR No. 266443.

95. In light of the foregoing, it is humbly submitted that the instant petition insofar as it involves the same parties as with the proceedings mentioned above and inasmuch as they cover the same factual and legal issues on the contested mayorship in the Municipality of Pandag, constitutes forum shopping which is prohibited by law.

96. In the case of *Fels Energy, Inc. v. the Province of Batangas,* the Honorable Supreme Court has held that:

> Thus, there is **forum shopping when there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions, (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other.**[44] (emphasis ours)

97. The Honorable Supreme Court further explains forum shopping in the case of *Zamora v. Quinan, et. al,* to wit:

> **To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.**
>
> For its part, ***litis pendentia*** **"refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes**

[44] *Fels Energy, Inc. v. the Province of Batangas,* G.R. No. 168557, February 16, 2007.

> **unnecessary and vexatious."** For *litis pendentia* to exist, three (3) requisites must concur: xxx
>
> **The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.**[45] (emphasis ours)

98. As already mentioned, the contested mayorship in the subject municipality is yet to be determined with finality in view of the pendency (1) before this Honorable Supreme Court of the case docketed as G.R. No. 266443 on the validity of the order of default of the RTC, and (2) before the COMELEC *En Banc* of the case docketed as EAC No. 058-2022 on the election protest proper.

99. To emphasize, there exists between those cases and herein petition commonality as to the identity of parties representing the same interest and the same issue, that is, the contested mayorship in the Municipality of Pandag.

100. The pendency of the said cases would only mean that herein petitioner has violated the rule against forum shopping.

101. In his Verification and Certification of Non-Forum Shopping, the petitioner deposed that no action or proceeding involving the same issues raised in this petition is pending before the Supreme Court.

102. Rule 7, Section 5 of the Rules of Court mandates that a willful and deliberate forum shopping shall be a ground for summary dismissal of a case with prejudice, thus:

> **Section 5.** *Certification against forum shopping.* —The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof and (c) if he

---

[45] *Zamora v. Quinan, et. al*, G.R. No. 216139, November 29, 2017.

> should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

103. Thus, on the ground of forum shopping, this petition must be dismissed.

V. The petitioner is estopped from assailing the constitutionality of the acts, issuances, and policy complained of. Thus, the Court must exercise the policy of constitutional avoidance.

i. The petitioner has sought to avail himself of the benefits of the very policy and issuance he is questioning on constitutional grounds, constituting estoppel, which is one of the pillars of limitation of judicial review.

104. A court's power of judicial review to declare executive and legislative acts void if violative of the Constitution will only be exercised "to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." This is called the constitutional policy of avoidance.[46]

105. The policy of constitutional avoidance finds its genesis in a concurring opinion of Justice Louis Brandeis on the United States case of *Ashwander v. Tennessee Valley Authority,* where he set forth the seven "pillars of limitations of judicial review".[47]

106. These rules of avoidance were then summarized in *Francisco, Jr. v. House of Representatives,* as follows:

> The foregoing "pillars" of limitation of judicial review, summarized in *Ashwander v. TVA* from different decisions of the United States Supreme Court, can be encapsulated into the following categories:

---

[46] *Palencia v. People of the Philippines,* G.R. No. 219560, July 01, 2020

[47] *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288, February 17, 1936.

1. that there be absolute necessity of deciding a case

2. that rules of constitutional law shall be formulated only as required by the facts of the case

3. that judgment may not be sustained on some other ground

4. that there be actual injury sustained by the party by reason of the operation of the statute

5. **that the parties are not in estoppel**

6. that the Court upholds the presumption of constitutionality.[48] (emphasis ours)

107. Under the rules and policies governing the invocation and exercise of the power of the courts of judicial review, estoppel on the part of the parties is recognized as one of the barriers to allow the consideration of constitutional questions through the exercise of the power of judicial review.

108. The doctrine means that one who employs a statute to his own use may not be allowed to assert its unconstitutionality. Estoppel, as an equitable instrument, holds that courts should not allow one to both utilize and assail a statute at the same time.[49]

109. In plain, a litigant may be estopped from asserting a statute's unconstitutionality through some prior conduct on his part. He is considered to have waived, in such instance, the right to challenge constitutionality.

110. Where a claimant challenging the constitutionality of a statute or act of an instrumentality has sought to avail himself of the benefits thereof, he is prevented from later questioning its constitutionality.

111. In the instant case, the petitioner sought from the public respondent MILG through the Minister the issuance of a Certificate of Recognition in his favor and has further categorically requested for recognition at least two more times.

---

[48] *Supra,* note 29.

[49] Duncan I. MacCalman, Constitutional Law -- Estoppel to Raise the Constitutional Question, 34 N.C. L. Rev. 514 (1956). Available at: http://scholarship.law.unc.edu/nclr/vol34/iss4/13 citing Booth Fisheries Co. v. Industrial Commission of Wisconsin, 271 U.S. 208 (1926).

112. The first was in a letter dated October 27, 2022.[50] Next was in a letter dated February 20, 2023.[51] The final request for recognition was in the letter dated May 12, 2023.[52]

113. In the petition, alleged public pronouncements of the MILG Minister made during a media interview was alluded to and quoted by the petitioner,[53] which is reproduced herein *in toto* from the text in the petition as follows:

> *"[A]ng* (sic) *na-issuhean talaga* (sic) *naming ng* certificate *ay si* Toy Mangudadatu, *(sic) yung* certification *(sic) na yun* was never disturbed ***dahil nagrequest sila Balayman sakin pero* at the same time *nag* request *din sila sa* national** which is not in accordance with law so *magiging* forum shopping *yun,* which is prohibited by law, so *sinabi* (sic) *naming* (sic) *sa kanila* that we will not act on this one until you follow the process. xxx"

114. Meanwhile, Annex I of the petition is the letter dated May 16, 2023 written by the public respondent MILG through then Minster Sinarimbo addressed to OIC Manager of Land Bank Buluan Branch. In that letter which the petitioner uses to support his allegation, there was a clear, unmistakable statement about the petitioner seeking or requesting the issuance of the Certificate of Recognition in his favor, as follows:

> What is worth noting is that the same **Mohajeran K. Balayman wrote our office on 12 May 2023 a letter requesting us to issue a Certificate of Recognition as the Mayor of the Municipality of Pandag, Maguindanao del Sur** on the basis of the same Certificate of Finality and Entry of Judgment issued by the COMELEC.
>
> We note that the letter did not contain the essential documents, and in particular, did not contain as attachment an official copy or attached the copy of the COMELEC *En Banc* Resolution dated 04 April 2023. This COMELEC Resolution is essential as this would clearly reveal what issues were resolved and made final and executory by the COMELEC. (emphasis ours)

---

[50]A copy of the Letter addressed to the MILG dated October 27, 2022 is herein attached as ANNEX "**7**".
[51] A copy of the Letter addressed to the MILG dated February 20, 2022 is herein attached as ANNEX "**8**".
[52] See ANNEX "**4**" of this Comment.
[53] Paragraph 73 of the Petition

115. Significantly, the petitioner did not refute or specifically deny any of these statements showing that he, as a point of fact, sought the Certificate of Recognition which he now assails on constitutional grounds.

116. The fact that the petitioner has directly requested the Certificate of Recognition from the public respondents means that he has recognized the validity of and sought to benefit from the same.

117. By his prior action, petitioner has recognized that the Certificate of Recognition, the Memorandum that requires it, the authority of the MILG to issue the same, and the legal bases under RA 11054 and the Bangsamoro Administrative Code are all valid and in order. He should not be allowed now to raise a challenge against their constitutionality.

118. In *Zandueta v. De La Costa*, the Honorable Court held the petitioner therein estopped from questioning the legality of the law by virtue of which his appointment has been issued. The Court ruled:

> Having arrived at the conclusion that the petitioner is estopped by his own act from proceeding to question the constitutionality of Commonwealth Act No. 145, by virtue of which he was appointed, by accepting said appointment and entering into the performance of the duties appertaining to the office conferred therein, and **pursuant to the well settled doctrine established by both American and Philippine jurisprudence relative to the consideration of constitutional questions, this court deems it unnecessary to decide the questions on constitutional law raised in the petition.**[54] (emphasis ours)

119. Petitioner, in this instant petition, is similarly estopped from mounting this constitutional challenge. Hence, the Court must observe the limitations of judicial review and refrain from entertaining and passing upon the instant petition.

VI. Petitioner cannot invoke the Honorable Supreme Court's expanded certiorari jurisdiction:

i. There is no grave abuse of discretion on the part of public respondents. Thus, certiorari and prohibition will not lie

---

[54] *Zandueta v. De La Costa,* G.R. No. 46267 November 28, 1938.

against public respondents BARMM Government and MILG.

120. Contrary to the arguments of the petitioner, the public respondents BARMM Government and MILG did not commit grave abuse of discretion nor have they acted in excess of its jurisdiction in relation to the questioned issuances and acts imputed to them.

121. As to public respondent BARMM Government, the petitioner imputes grave abuse of discretion based solely on the statements made in the letter of the Chief of Staff of the OCM dated August 07, 2023.

122. According to the petition, since the OCM's Chief of Staff stated that he (referring to the Chief of Staff) stands firm "together with the entire Bangsamoro Government", there is no more appeal or any other speedy, adequate remedy to counteract the alleged wrongful issuances and acts of the other public respondent, the MILG.

123. In fine, the petition considers that one line in the subject letter as the final and binding position of the BARMM Government.

124. The contentions of the petitioner are utterly misplaced.

125. Firstly, it is highly erroneous for the petitioner to suppose or assume that such statements of the Chief of Staff of the OCM in a mere letter represent the immovable position of the entire BARMM Government.

126. Secondly, a close perusal of the contents and context of the subject letter stating the Chief of Staff's position to stand firmly with MILG relative to the contested mayorship of the Municipality of Pandag, Maguindanao del Sur amounts to nothing more than an expression of deference to the instrumentality of the Bangsamoro Government that has the expertise over the issue raised.

127. Nothing therein shows or indicates, nor does the petition allege or show, that the same amounts to and must be treated as a declaration of any determined policy position, let alone a judgment on the merits of the mayoralty issue that is binding for the rest of the BARMM Government.

128. It bears stressing that the law does not prohibit an agency or official from asserting their opinion or standpoint on some issues. No less than the Constitution sanctifies the principle that public office is a public trust and

enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty, and efficiency.[55]

129. Moreover, the petitioner should not fault nor assign malice in the expressed opinion of the Chief of Staff that relies on or defers to the factual determination and expertise of another administrative agency pertaining to a specific issue.

130. In this case, the MILG is the agency in the BARMM that would have the necessary expertise on the issue of the contested mayoralty of Pandag, having the primary competence over matters of local governments.

131. Jurisprudence on this matter is instructive as it provides that the factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence.[56]

132. In light of this, surely, it cannot be said that the Chief of Staff acted whimsically nor capriciously in expressing the opinion or standpoint that is being questioned in this petition seeking the extraordinary writs of *certiorari* and prohibition. The same, perforce, must fail.

133. Additionally, a perusal of the letter dated August 07, 2023 likewise shows that the Chief of Staff was not animated by malice or ill will but have acted in good faith and on the premise of regularity of duty and function when it addressed herein petitioner, to wit:

> As public servants, we are simply duty-bound to act and reply to letters received by our office, regardless of origin.
>
> Lastly, I would like to state that together with the rest of the Bangsamoro Government, I firmly stand with the position of the Ministry of the Interior and Local Government (MILG) on the contested mayorship of Pandag Municipality. You can be assured that the Bangsamoro Government is committed to ensuring that the democratic processes are followed and that the rights of all parties involved are respected.

---

[55] *Trinidad v. Office of the Ombudsman,* G.R. No. 227440, December 02, 2020.

[56] *Republic v. Salvador N. Lopez Agri-Business Corp.*, G.R. Nos. 178895 and 179071, January 10, 2011, 639 SCRA 49, 60, citing *Taguinod v. Court of Appeals*, G.R. No. 154654, September 14, 2007, 533 SCRA 403, 416.

I hope that with this letter, we were able to clarify any misunderstandings. xxx

134. The imputations of the petition against the public respondent BARMM Government insofar as it is anchored on the subject letter and opinion of the Chief of Staff of the OCM clearly falls short of convincing that the acts were done in a capricious and despotic manner tantamount to grave abuse of discretion.

135. Meanwhile, the challenged issuances and acts of the public respondent MILG similarly does not amount to grave abuse of discretion or excess of jurisdiction as to warrant the issuance of *certiorari* and prohibition prayed for by the petitioner.

136. The creation and establishment of the MILG as the primary instrumentality of the BARMM relative to the administration of local governments is anchored primarily on the following provisions of RA 11054 or the Bangsamoro Organic Law, *to wit*:

ARTICLE VI

INTERGOVERNMENTAL RELATIONS

xxx

SEC 10. *Bangsamoro Government and its Constituent Local Government Units.* – The authority of the Bangsamoro Government to regulate the affairs of its constituent local government units shall be guaranteed in accordance with this Organic Law and a Bangsamoro local government code to be enacted by the Parliament. The privileges already enjoyed by local government units under Republic Act No, 7160, otherwise known as the *"Local Government Code of 1991,"* as amended, and other existing laws shall not be diminished. xxx

ARTICLE XVI

BANGSAMORO TRANSITION AUTHORITY

xxx

SEC. 2. *Bangsamoro Transition Authority.* – There is hereby created a Bangsamoro Transition Authority which shall be the interim government of the Bangsamoro Autonomous Region during the transition period. xxx

SEC. 3. *Powers and Authorities.* – Legislative and executive powers in the Bangsamoro Autonomous Region during transition shall be vested in the Bangsamoro Transition Authority. xxx

All powers and functions of the Bangsamoro Government as provided in this Organic Law is vested in the Bangsamoro Transition Authority during the transition period.

SEC. 4. *Functions and Priorities.* – The Bangsamoro Transition Authority shall ensure the accomplishment of the following priorities during the transition period:

(a) Enactment of priority legislations such as the Bangsamoro Administrative Code, Bangsamoro Revenue Code, Bangsamoro Electoral Code, Bangsamoro Local Government Code, and Bangsamoro Education Code consistent with the powers and prerogatives vested in the Bangsamoro Government by this Organic Law: *Provided,* That until the abovementioned laws are enacted, the Muslim Mindanao Autonomy Act No. 25, otherwise known as the *"Autonomous Region in Muslim Mindanao Local Government Code,"* and subsisting laws on elections and other electoral matters shall apply in the Bangsamoro Autonomous Region. xxx

(c) Organization of the bureaucracy of the Bangsamoro Government during transition xxx This also includes the setting up of offices and other institutions necessary for the continued functioning of government and delivery of social services in the Bangsamoro Autonomous Region, as well as those necessary for the smooth operation of the first elected Bangsamoro Government xxx

SEC. 7. *Interim Officers.* – The interim Chief Minister shall organize the interim Cabinet xxx

SEC. 8. *Interim Cabinet.* – The Interim Cabinet shall be composed of fifteen (15) primary ministries with suboffices, namely:

1. Finance and Budget and Management;
2. Social Services;
3. Trade, Investments, and Tourism;
4. Labor and Employment;
5. Transportation and Communications;

6. Basic, Higher, and Technical Education;
7. Indigenous Peoples' Affairs;
8. Health;
9. Public Works;
10. **Local Government;**
11. Environment, Natural Resources, and Energy;
12. Human Settlements and Development;
13. Science and Technology
14. Agriculture, Fisheries, and Agrarian Reform; and
15. Public Order and Safety

137. On March 29, 2019, the BTA, acting as the Bangsamoro Parliament during the transition period, enacted BAA 13, or the Bangsamoro Administrative Code which laid out "the structural, functional and procedural principles and rules of governance of the Bangsamoro Autonomous Region in Muslim Mindanao."[57]

138. Under the Bangsamoro Administrative Code, the mandates, powers and functions, and duties of the MILG are provided and detailed, as well as the powers, authorities, and competence of the Minister thereof.

139. Of particular relevance here are the following provisions of the Bangsamoro Administrative Code:

TITLE IV:
The Bangsamoro Cabinet

xxx

Chapter 2
Administrative Organization

xxx

Sec. 13. *The Bangsamoro Cabinet.* - Without prejudice to the authority of the Bangsamoro Government to reorganize the Cabinet and create new offices, the Bangsamoro Cabinet shall be composed of the following primary ministries with sub-offices, namely:

a. Finance, and Budget and Management;
b. Social Services and Development;
c. Trade, Investments, and Tourism;
d. Labor and Employment;

---

[57] BAA 13, Sec. 2.

e. Transportation and Communications;
f. Basic, Higher, and Technical Education;
g. Indigenous Peoples' Affairs;
h. Health;
i. Public Works;
j. **Interior and Local Government;**
k. Environment, Natural Resources, and Energy;
l. Human Settlements and Development;
m. Science and Technology;
n. Agriculture, Fisheries, and Agrarian Reform; and
o. Public Order and Safety.

xxx

BOOK V
GENERAL FUNCTIONS OF THE CABINET

Chapter 1
The Cabinet Ministers

Sec. 1. *Executive Function and Authority of the Bangsamoro Cabinet.* - The executive function and authority shall be exercised by the Cabinet which shall be headed by a Chief Minister. The acts of the Bangsamoro Cabinet members performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Minister, presumptively executive acts.

xxx

Sec. 4. *Authority and Responsibility of the Cabinet Ministers.* - The Cabinet Ministers shall have the authority and responsibility to exercise the mandates of their respective Ministries.

xxx

Chapter 6
Administrative Issuances

Sec. 16. *General Classification of Issuances.* - The administrative issuances of Cabinet Members and heads of bureaus, offices or agencies shall be in the form of circulars or orders. Circulars shall refer to issuances prescribing policies, rules and regulations, and procedures promulgated pursuant to law, applicable to individuals and organizations outside the Bangsamoro Government and designed to supplement

provisions of the law or to provide means for carrying them out, including information relating thereto. Orders shall refer to issuances directed to particular offices, officials, or employees, concerning specific matters including assignments, detail and transfer of personnel, for observance or compliance by all concerned.

xxx

BOOK VI
MINISTRIES AND OFFICES

xxx

TITLE VIII
INTERIOR AND LOCAL GOVERNMENT

Chapter 1
General Provisions

xxx

Sec. 2. *Mandate.* - The Ministry of the Interior and Local Government shall exercise general supervision over the constituent local governments units of the Bangsamoro Government, and ensure public safety and disaster preparedness, local autonomy, decentralization, and community empowerment.

Sec. 3. *Powers and Functions.* - The Ministry of the Interior and Local Government shall have the following powers and functions:

a. Advise the Chief Minister on the Government of the Day's policies, rules, regulations, and other issuances relative to the general supervision of local government units;

b. Establish and prescribe rules, regulations, and other issuances implementing laws on general supervision of local government units and on the promotion of local autonomy, and monitor compliance thereof by the said units;

c. Provide technical assistance in the preparation of regional legislation affecting local governments units;

d. Establish and prescribe plans, policies, programs, and projects to strengthen the administrative, technical, and fiscal capabilities of local government offices and personnel;

e. Implement plans, policies, programs, and project to promote public order and safety and disaster preparedness within the Bangsamoro Autonomous Region in Muslim Mindanao;

f. Formulate plans, policies, and programs which will meet regional and local emergencies arising from natural and human-made calamities;

g. Enforce its disciplinary authority over elective officials in accordance with the Bangsamoro Local Governance Code enacted by the Parliament; and

h. Perform other functions as maybe provided by law.

140. The existence, creation, mandate, and the exercise of the functions of the public respondent MILG are clearly based on law.

141. A reading of the above-cited legal bases for the existence, mandate, and powers of the public respondent MILG and its Minister also shows that the challenged issuance regarding the Certificate of Recognition is directly sourced from the provisions of statute.

142. The public respondent MILG was acting well within the statutory mandate of the agency when it issued the challenged issuance and enforced the same. It was lawfully exercising its jurisdiction and competence under the law based on the provisions of the Bangsamoro Organic Law and the Bangsamoro Administrative Code.

143. As such, the challenged issuance and acts cannot be said to have been issued and performed arbitrarily or wantonly as to amount to grave abuse of discretion. The public respondent MILG's actions were not without any factual or legal bases.

144. As borne in the records, including the documents relied on by the petition, proof is extant that the public respondent MILG's act of issuing the assailed Certificate of Recognition in favor of private respondent and the decision not to disturb the same against the request and representations of the petitioner was not done wantonly or perfunctorily.

145. The assailed Certificate of Recognition dated August 25, 2023, for instance, carefully laid out the legal and factual premises relied upon by the public respondent MILG, the pertinent parts thereof are reproduced below, *viz.*:

> Additionally, this recognition is given due to the following factors to wit:
>
> i. The Decision of the Regional Trial Court Branch 15, Shariff Aguak Maguindanao in EP SA 16-2022 which contains the main issue of mayoralty in the said municipality was elevated to the Commission on Elections First Division and is currently pending with the said Division docketed as EAC No. 058-2022;
>
> ii. The Resolution of the Commission *En Banc* in SPR Case No. 001-2022 only ruled that (a) the election protest of Mohajeran K. Balayman was filed within the prescribed period; and (b) the declaration of Khadafeh G. Mangudadatu in default was a mere error in judgment and not grave abuse of discretion; and
>
> iii. There is no declaration by the Commission *En Banc* that Mohajeran K. Balayman is the winner in the abovementioned case (SPR Case No. 001-2022).

146. The determination and careful appreciation of the legal and factual milieu in the assailed Certificate of Recognition demonstrates that the issuance has not been so arbitrarily or capriciously arrived at.

147. As to the manner of exercising the acts and issuance complained of, it is likewise the case that the actuations of public respondent MILG does not rise to the level of grave abuse of discretion. The MILG, as the agency clothed with the mandate within the BARMM Government in overseeing local governments, acted within its province of oversight or general supervision as provided in the Bangsamoro Administrative Code.

148. It bears stressing that in the instant petition, there is little to none in terms of specific allegations from the petitioner as to how or in what manner the exercise of the power of the MILG was undertaken in an arbitrary, capricious, or whimsical manner. Nor were there any substantiated averments that the actions complained of were animated by reason of passion, prejudice, or personal hostility that is so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of the law.

149. It cannot also be said that the mere invocation of a constitutional challenge leveled against the legal bases for the MILG's creation, mandates, and powers, i.e. the pertinent provisions of RA 11054 and of the Bangsamoro Administrative Code, by themselves give rise to grave abuse of discretion.

150. Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence.[58]

151. The Honorable Supreme Court in the case of *Cesar T. Tirol v. Tayengco-Lopingco, et. al.* has held that:

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.
>
> Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.[59]

152. Thus, public respondents submit that no grave abuse of discretion nor exercise of power in a whimsical, capricious, or despotic manner were committed.

153. Considering the foregoing, the extraordinary remedies of *certiorari* and prohibition will not lie against herein public respondents.

ii. There exists an appeal or other speedy and adequate remedy in the ordinary course of law.

154. The petitioner asserts that no appeal or any speedy and adequate remedy is available to challenge the Certificate of Recognition considering that the Chief Minister himself has ostensibly manifested that his Office is

---

[58] *United Coconut Planters Bank v. Looyuko and Go*, G.R. No. 156337, 28 Sept 2007.
[59] *Cesar T. Tirol v. Tayengco-Lopingco, et. al.*, G.R. No. 211017, March 15, 2022.

one with the MILG in not recognizing the petitioner as the Mayor of Pandag.

155. The arguments of the petitioner do not hold water.

156. As already discussed above, the letter of the Chief of Staff of the OCM does not bind and cannot be regarded as binding as to the Chief Minister himself. It is clear as day that the letter merely contained the individual expression of an opinion or standpoint.

157. Contrary to the petitioner's patently mistaken assertion, there are other speedy and adequate remedies in the ordinary course of law available to him.

158. On the matter of the supposedly mistaken or wrongful issuance by the public respondent MILG of a Certificate of Recognition in favor of the private respondent and the subsequent decision not to disturb the same, it must be underscored that the petitioner is not precluded from submitting all the proper documentation to the MILG in order to establish that the dispute has already been settled definitively in his favor.

159. As the public respondent MILG through the Minister mentioned in the cited letter he sent to the OIC Manager of the Land Bank,

> "What is worth noting is that the same **Mohajeran K. Balayman wrote our office on 12 May 2023 a letter requesting us to issue a Certificate of Recognition as the Mayor of the Municipality of Pandag, Maguindanao del Sur** on the basis of the same Certificate of Finality and Entry of Judgment issued by the COMELEC.
>
> **We note that the letter did not contain the essential documents, and in particular, did not contain as attachment an official copy or attached the copy of the COMELEC *En Banc* Resolution** dated 04 April 2023. This COMELEC Resolution is essential as this would clearly reveal what issues were resolved and made final and executory by the COMELEC." (emphasis ours)

160. This clearly establishes that there is still an administrative recourse available to the petitioner. But instead of submitting the documents supporting his claim, the petitioner interposed the instant suit directly to the Honorable Court.

161. The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review.[60]

162. It is a settled rule that non-observance of the said doctrine results in lack of a cause of action, which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.[61]

163. The issue on the issuance or non-issuance of the assailed Certificate of Recognition should have been adequately settled before the administrative authorities prior to resorting to a court of justice for review.

164. The Honorable Supreme Court in the case of *Cunanan v. CA* has held that:

> A petitioner must allege in his or her petition and establish facts to show that any other existing remedy is not speedy or adequate. Where the existence of a remedy by appeal or some other plain, speedy and adequate remedy precludes the granting of the writ, a petitioner must allege facts showing that any existing remedy is impossible or unavailing. A petition for *certiorari* which does not comply with the requirements of the Rules may be dismissed. In the present case, Cunanan had not shown that there was no other speedy and adequate remedy. She simply alleged that grave abuse of discretion was committed.[62]

165. As can be gleaned from above, one of the essential requisites of a petition for *certiorari* is that there is neither appeal nor any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the questioned proceeding.[63] Thus, the petitioner is patently mistaken in vindicating his rights.

166. Indeed, where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of.[64]

---

[60] *Castro v. Gloria,* G.R. No. 132174, August 20, 2001.
[61] *Id.*
[62] *Cunanan v. CA,* G.R. No. 205573, August 17, 2016
[63] *Id.*
[64] *Id.*

167. The failure to exhaust all available administrative remedies, paired with the non-observance of the hierarchy of courts, are procedural lapses that merit the outright dismissal of the instant petition.

168. It is an elementary rule that petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials.[65] This is pursuant to the court's "expanded certiorari jurisdiction". In the case of *Francisco v. House of Representatives et al.,* the Honorable Supreme Court has held:

> **"To ensure the potency of the power of judicial review to curb grave abuse of discretion by "any branch or instrumentalities of government," the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called "expanded *certiorari* jurisdiction" of this Court,** the nature of and rationale for which are mirrored in the following excerpt from the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion: xxx
>
> > Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, **the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction.** This is not only a judicial power but a duty to pass judgment on matters of this nature.[66] xxx (emphasis ours)

169. However, for the Honorable Court to exercise its expanded power of judicial review, it is indispensable that the allegation of "grave abuse of discretion" must be established. In addition, it must be established that there are no available appeal or other adequate or speedy remedy in the ordinary course of law.

170. To repeat, in certiorari proceedings under Rule 65 of the Revised Rules of Court, the Court's inquiry is limited to determining whether or not the public officer acted without or in excess of his or her jurisdiction, or with grave abuse of discretion.[67] Thus, without any specific allegation as to

---

[65] *Ermita v. Aldecao-Delorino,* G.R. No. 177130, June 7, 2011.
[66] *Supra,* note 29.
[67] *Morales v. Ombudsman,* G.R. No. 208086, July 27, 2016.

how the public respondent BARMM Government and MILG committed acts that are contrary to law, the Constitution or jurisprudence, or how they executed their duties in a whimsical or despotic manner, this Honorable Court's expanded certiorari jurisdiction could not be successfully invoked.

171. All told, the petition's resort and prayer for *certiorari* and prohibition must fail.

172. In view of the serious procedural infirmities laid out and discussed in the foregoing, the public respondents respectfully submit that the instant petition deserves scant consideration and warrants outright denial of due course and dismissal.

173. There is no need to consider and pass upon the substantive arguments and issues raised in the petition, particularly of the constitutional questions, given that the same are not the *lis mota* of the case.

174. Nevertheless, out of diligence and to address the erroneous averments of the petition, the public respondents aver the following.

VII. The claim of petitioner that he is the legitimate Mayor of Pandag, Maguindanao del Sur is misplaced because the winner of the mayoralty race in Pandag, Maguindanao del Sur is not yet settled.

175. Coming now to the crux of the case, the petitioner alleges and puts in issue the determination that he is the legitimate Mayor of the Municipality of Pandag, Maguindanao del Sur.

176. He posits that based on the judgment promulgated by the RTC Branch 15 of Shariff Aguak, Maguindanao proclaiming him the winner and the duly elected Mayor, as well as the Writ of Execution issued thereafter, the matter is already closed and settled.

177. The petitioner's contentions fail to convince. The claim of petitioner that he is the legitimate Mayor is patently misplaced because the question as to the mayoralty issue of Pandag, Maguindanao del Sur is still not fully settled.

178. That the status of his claim as the legitimate Mayor is placed on issue in this very petition by the petitioner himself as a core and primary question for resolution by the Honorable Court proves that the determination of winner of the elections for Mayor of Pandag, Maguindanao del Sur is far from settled and still very much in dispute.

179. It is worth stressing that in this very petition, the petitioner raises in issue the determination that he is the legitimate Mayor of the Municipality of Pandag. The petitioner is effectively calling upon the Honorable Supreme Court to rule and decide on the mayoralty issue of Pandag, Maguindanao del Sur.

180. This lends further credence and proof to the earlier averment that the focal and motivational cause of the instant petition is the election controversy between him and the private respondent.

181. Clearly, the constitutional challenges he interposed herein are not the very *lis mota* of the case. This effectively precludes the determination of the constitutional issues raised by the petition.

182. As for the public respondents, it must be said that they cannot get involved in the resolution of the mayoralty issue considering that the same is a contest between the winning and losing candidates.

183. An election protest involves a contest between the defeated and winning candidates on the grounds provided under the law such as fraud or irregularities in the casting and counting of ballots, or in the preparation of the returns, etc. It is centered on the issue of who actually and validly obtained the plurality of votes.[68]

184. The public respondents, not being a party to the election protest and the appurtenant proceedings, nor the tribunal clothed with jurisdiction to resolve the same, they have no personality to pass upon the determination of the questions presented therein.

185. In this regard, it must be said that the task and duty of the public respondents, especially of the MILG, relative to the election and protest case is to observe the implementation of the law without getting involved in the determination of the question of who the winner of the mayoralty race is.

---

[68] *Marcos, Jr. v. Robredo,* P.E.T. Case No. 005, February 16, 2021.

186. Upon the resolution and settlement by the authorities clothed with jurisdiction of the same, the public respondents are duty bound to respect and abide by the decision.

187. As will be discussed thoroughly below, public respondent MILG is not deciding the results or outcome of any local elections or electoral protests when it requires the requests for Certificate of Recognition from local elective officials.

188. In the same vein, it is not deciding the results or outcome of any local elections or electoral protests by refusing to disturb or reverse the Certificate of Recognition it has earlier issued.

189. In dispensing with the powers mandated to it as the overseer of the affairs of local governments within the autonomous region relative to the assailed requirement for Certificate of Recognition, the public respondent MILG is only after ensuring that (1) the law is being followed; and (2) the interests of the parties and stakeholders, including of the public who should be receiving unimpeded local government services, are not prejudiced.

VIII. The public respondent MILG is not deciding election contests but merely enforcing its mandate in overseeing the affairs of the constituent local government, as provided under the law.

190. Public respondents BARMM Government and the MILG strongly take exception and specifically deny the allegation in the petition that they are exercising discretion or otherwise deciding electoral contests or cases by recognizing local elective officials and issuing the certifications therefor.

191. The petitioner gravely confuses and obfuscates the matter of the public respondent MILG exercising its mandate to oversee the affairs of the local governments within the Bangsamoro Autonomous Region by acknowledging and recognizing their status as the duly elected local officials, on one hand; and the power to choose the local elective officials as well as the power to decide all contests pertaining to local elections, on the other.

192. This must not be countenanced.

193. The power to choose whom to vote and elect rightfully belongs to the voters, and the power to decide and settle election contests and protests rightfully belongs to the COMELEC and the courts.

194. It must be underscored that the public respondents, particularly the MILG, are in no way, shape, or form interfering in these matters by recognizing and acknowledging the elected local officials within the autonomous region.

195. In the first place, the act of recognizing and/or acknowledging are matters that, necessarily, are only undertaken after the fact, i.e. after the elections or protests. Meaning, these can only be done when the decision of the electorate has been made and proclaimed as such by the electoral authorities, and, if there should be any contest, upon proper showing that the definite resolution of the same has been obtained with finality.

196. To be sure, the public respondents are duty bound to respect and abide by these decisions.

197. Petitioner's attempt to equate the act of recognizing and/or acknowledging the locally elective officials by the public respondent MILG with the power to elect the same officials and the power to decide contests or protests clearly has no basis and deserve scant consideration.

198. Finally, in this regard, the petitioner also asserts that public respondent MILG has no discretion or power to decide whom to recognize as locally elected officials.

199. As will be elaborated further in the averments below, contrary to the petitioner's claim, the MILG is empowered to exercise such discretion in the acknowledgment and recognition of the local elected officials pursuant to powers, functions, and mandates under the law.

IX. The powers granted to the Bangsamoro Government encompass a wide array of areas of governance, pursuant to the constitutional policy on regional autonomy.

200. To reiterate, the disposition of the instant petition does not necessitate passing upon the constitutional questions raised herein because these are not the *lis mota* of the case.

201. Nonetheless, out of prudence and in order to address the patently erroneous averments of the petition, the following arguments and discussions are respectfully stated.

202. The petitioner posits that the Philippine Constitution has limited the power of the BARMM Government to economic, cultural, and social aspects of governance only.

203. This interpretation is utterly bereft of merit and must be rejected outright.

204. A simple reading of the enumeration in Article X, Section 20[69] of the 1987 Constitution would instantly belie the petitioner's misplaced interpretation.

205. The very first item in the enumeration is "*(1) Administrative organization*". It is beyond cavil that this item covers political and public administration related competence and authorities. By this alone it is apparent that the interpretation forwarded by the petitioner is wholly erroneous.

206. It strains rationality how the petitioner managed to jump to the conclusion that the powers granted in the Constitution to autonomous regions like the BARMM are limited to the economic, social, and cultural aspects of governance only when the provision on its face is clear as day that the competence of the autonomous regions can cover aspects of governance well beyond economic, social, and cultural.

207. The erroneous interpretation of the petitioner would also go against the clear intent of the framers of the Constitution on the constitutional policy

---

[69] CONST, art. X:

Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

1. Administrative organization;
2. Creation of sources of revenues;
3. Ancestral domain and natural resources;
4. Personal, family, and property relations;
5. Regional urban and rural planning development;
6. Economic, social, and tourism development;
7. Educational policies;
8. Preservation and development of the cultural heritage; and
9. Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

of regional autonomy. This intent is supported and sustained in jurisprudence by the Honorable Court, as follows:

> [I]n *Cordillera Broad Coalition v. Commission on Audit,* the Court, with the same composition, ruled without any dissent **that the creation of autonomous regions contemplates the grant of *political* autonomy**—an autonomy which is greater than the administrative autonomy granted to local government units... On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of political autonomy and not just administrative autonomy to these regions.
>
> **And by regional autonomy, the framers intended it to mean "meaningful and authentic regional autonomy."** As articulated by a Muslim author, substantial and meaningful autonomy is "the kind of local self-government which allows the people of the region or area the power to determine what is best for their growth and development without undue interference or dictation from the central government.[70] (emphasis ours)

208. The inescapable conclusion from the foregoing is that the powers and competencies granted under the Constitution pursuant to the policy on regional autonomy are wide-ranging to cover not just economic, social, and cultural aspects of governance.

X. Article VI, Section 10 of RA 11054 regarding the authority of the BARMM Government to regulate the affairs of constituent local government units is valid and constitutional.

209. This is another constitutional issue that does not need to be passed upon in the resolution of the instant petition as it is not the *lis mota* of the case. Prudence dictates in such cases that the Court refrains from exercising its power of judicial review.

210. Moreover, RA 11054, or the Bangsamoro Organic Law, enjoys the presumption of validity and constitutionality which should not be disturbed in this petition.

---

[70] *Disomangcop, supra,* note 3.

211. Nevertheless, the following are respectfully averred to address the erroneous claims of the petitioner.

212. Petitioner assails the constitutionality of Article VI, Section 10 of RA 11054 on two grounds: (1) the power to regulate the affairs of LGUs within the autonomous regions is not provided in Article X, Section 20; and (2) that the constituent LGUs within the BARMM cannot be subjected to regulation by the BARMM Government as regulation is equivalent to control.

213. Again, the contentions of the petitioners are bereft of merit and deserve scant consideration.

214. That the power "to regulate the affairs of the LGUs within the autonomous region" does not literally appear in the list provided in Article X, Section 20 of the Constitution does not mean that the same is necessarily excluded from the wide array of competence and authorities of the autonomous region allowed under the Constitution.

215. Petitioner purports to characterize Article X, Section 20 as a closed list such that applying the rule on statutory construction *expressio unius est exclusio alterius*, anything that is not in the list is deemed excluded.

216. Again, a plain reading of the subject provision will suffice to refute and rebut petitioner's contention.

217. Under item no. (9) of Article X, Section 20, it clearly stated: "Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region."

218. Resort to the rules of statutory construction is not called for if the plain reading of the law already clearly expresses its meaning and intent. When the law is clear, there is no room for interpretation or construction. There is only room for application. Thus, the plain-meaning rule or *verba legis*.[71]

219. It is very clear that "other matters as may be authorized by law" are also within the competence and authorities of the autonomous region.

---

[71] *Bolos v. Bolos,* G.R. No. 186400, October 20, 2010

220. In the case of the BARMM, the law that authorized the "other matters" that will be covered by the legislative powers of the autonomous region is RA11054 or the Bangsamoro Organic Law.

221. Among those matters is provided in Article VI, Section 10 thereof. The Bangsamoro Organic Law has expressly authorized and guaranteed the authority of the Bangsamoro government to regulate the affairs of the constituent LGUs.

222. Another reason cited by the petitioner as to why the power to regulate the affairs of the LGUs within the BARMM cannot be subject to the authority of the regional government is that regulation allegedly is equivalent or tantamount to control.

223. Since no authority allegedly exercises control over LGUs owing to the constitutionally mandated local autonomy enjoyed by them with the President only having the power of general supervision over the LGUs, and because, according to the petitioner's theory the word "regulate" is the same as "control", then the provision of Article VI, Section 10 is unconstitutional.

224. The contention of the petitioner must once again fail.

225. It must be stated that while the President's power over LGUs is limited to general supervision, the LGUs are still bound by the legislative power of Congress to the extent that the Constitution has mandated the legislature to enact a local government code in which all "matters relating to the organization and operation of the local units"[72] are defined and through which the LGUs are able to exercise and realize their local autonomy.

226. In the case of *Hon. RTC Judge Mercedes G. Dadole, et al. vs. Commission on Audit*, which the petitioner himself cited, the Honorable Supreme Court has ruled:

> We recognize that, although our Constitution guarantees autonomy to local government units, **the exercise of local autonomy remains subject to the power of control by Congress** and the power of supervision by the President.[73]

---

[72] CONST., art X, sec. 3

[73] *Hon. RTC Judge Mercedes G. Dadole, et al. vs. Commission on Audit*, G.R. No. 125350 December 3, 2002.

227. Applying the above-cited pronouncement of the Court, the power of Congress to define the contours of the exercise of local autonomy is done through the enactment of laws like the Local Government Code, and in the case of autonomous regions, through organic acts like RA 11054. The President, exercising his power of general supervision over the LGUs and autonomous regions, in turn, ensures and sees to it that the rules and laws laid down in the Local Government Code, the organic acts, and other laws are followed.

228. It is therefore gravely erroneous for the petitioner to perfunctorily claim that no one has the power of control or regulation over LGUs. The premise of the constitutional challenge clearly has no leg to stand on.

229. In *Hon. Franklin Drilon vs. Mayor Alfredo Lim*, a case also cited by the petitioner, it was held that "an officer in control lays down the rules in the doing of an act".[74] This is what is meant by the power of control of the Congress over LGUs in the exercise of its legislative powers.

230. Significantly, Congress has already devolved this power to the BARMM Government by legislating the inclusion of Article VI, Section 10 of RA 11054, which says:

> **Section 10.** *Bangsamoro Government and its Constituent Local Government Units.* - **The authority of the Bangsamoro Government to regulate the affairs of its constituent local government units shall be guaranteed in accordance with this Organic Law and a Bangsamoro local Government code to be enacted by the Parliament.** The privileges already enjoyed by local government units under Republic Act No. 7160, otherwise known as the "Local Government code of 1991," as amended, and other existing laws shall not be diminished. (emphasis ours)

231. Parenthetically, the challenged provisions of BAA 13 or the Bangsamoro Administrative Code on the authority to regulate the affairs of LGUs simply replicated the language of Article VI, Section 10 of the Bangsamoro Organic Law, i.e. that it shall be in accordance with the Bangsamoro local government code to be enacted by the Parliament.

232. All told, the contention of the petitioner in declaring Article VI, Section 10 of RA 11054 on the authority of the BARMM Government to regulate the affairs of constituent LGUs as unconstitutional is without merit.

---

[74] *Hon. Franklin Drilon vs. Mayor Alfredo Lim,* G.R. No. 112497 August 4, 1994

XI. The establishment of MILG in BARMM and the provisions for its mandates, powers, and functions in the Bangsamoro Administrative Code are valid and constitutional.

233. The petitioner next interposes a set of constitutional questions against the provisions of the Bangsamoro Administrative Code relative to the creation and establishment of the MILG, the declaration of policy pertaining to it in which the power to regulate the affairs of LGUs has been referenced, the provisions giving the MILG powers of general supervision over the LGUs of the BARMM, and finally, the provision giving the MILG power to enforce disciplinary authority over local elective officials.

234. Just like in the earlier discussions above, it is not proper to tackle these constitutional challenges against the provisions of the Bangsamoro Administrative Code as they are not the *lis mota* of the case and for which reason, the Court must be constrained to stay its hands in exercising its power of judicial review.

235. Furthermore, the Bangsamoro Administrative Code, a law enacted by the Bangsamoro Parliament pursuant to its mandates under the Bangsamoro Organic Law, enjoys the presumption of validity and constitutionality which must not be disturbed in this petition.

236. Nevertheless, out of prudence and to address the erroneous averments of the petitioner, the following arguments and discussions are submitted.

237. In assailing the constitutionality of the establishment of the MILG as an agency of the BARMM and the replication of the statement from the Bangsamoro Organic Law about the authority of the BARMM to regulate the affairs of the constituent LGUs in the provision on the MILG's declaration of policies, the petitioner simply rehashed the same specious arguments about applying the rule of statutory construction and its misplaced appreciation about the power of regulation or control.

238. Petitioner again contends that because "interior and local government" does not appear in the list under Article X, Section 20 of the Constitution and also in the list of the fifty-five powers devolved to the BARMM under Article V, Section 2 of RA 11054, then "interior and local government" is not a power devolved to the Bangsamoro and, as such,

the entire Title on the MILG in the Bangsamoro Administrative Code is unconstitutional.

239. The contention of the petitioner is utterly bereft of merit.

240. Apart from another misguided use of the rules of statutory construction and the misunderstanding on the valid delegation of the power of regulation over the affairs of LGUs which has already been exhaustively covered above and which are similarly applicable here, it must be elaborated that the petitioner has terribly overlooked the other relevant provisions of the Bangsamoro Organic Law that actually supports the establishment and creation of the MILG and, as well, the provisions for its mandates, powers, and functions.

241. There is, as already thoroughly discussed earlier, Article VI, Section 10 of the Bangsamoro Organic Law where the authority of the BARMM Government to regulate the affairs of the constituent LGUs is guaranteed.

242. It must be stated that although this is found in another Article of the Bangsamoro Organic Law, it is still very much a statement of a devolved power in favor of the Bangsamoro Autonomous Region.

243. Petitioner also overlooked Article XVI of the Bangsamoro Organic Law which provides for the creation of the BTA and in which it is stated:

ARTICLE XVI
BANGSAMORO TRANSITION AUTHORITY

xxx

> **SEC. 2.** *Bangsamoro Transition Authority.* – There is hereby created a Bangsamoro Transition Authority which shall be the interim government of the Bangsamoro Autonomous Region during the transition period. xxx
>
> **SEC. 3.** *Powers and Authorities.* – Legislative and executive powers in the Bangsamoro Autonomous Region during transition shall be vested in the Bangsamoro Transition Authority. xxx
>
> All powers and functions of the Bangsamoro Government as provided in this Organic Law is vested in the Bangsamoro Transition Authority during the transition period.

SEC. 4. *Functions and Priorities.* – The Bangsamoro Transition Authority shall ensure the accomplishment of the following priorities during the transition period:

(a) Enactment of priority legislations such as the Bangsamoro Administrative Code, Bangsamoro Revenue Code, Bangsamoro Electoral Code, Bangsamoro Local Government Code, and Bangsamoro Education Code consistent with the powers and prerogatives vested in the Bangsamoro Government by this Organic Law: *Provided,* That until the abovementioned laws are enacted, the Muslim Mindanao Autonomy Act No. 25, otherwise known as the *"Autonomous Region in Muslim Mindanao Local Government Code,"* and subsisting laws on elections and other electoral matters shall apply in the Bangsamoro Autonomous Region. xxx

(d) Organization of the bureaucracy of the Bangsamoro Government during transition xxx This also includes the setting up of offices and other institutions necessary for the continued functioning of government and delivery of social services in the Bangsamoro Autonomous Region, as well as those necessary for the smooth operation of the first elected Bangsamoro Government xxx

xxx

SEC. 8. *Interim Cabinet.* – The Interim Cabinet shall be composed of fifteen (15) primary ministries with suboffices, namely:

1. Finance and Budget and Management;
2. Social Services;
3. Trade, Investments, and Tourism;
4. Labor and Employment;
5. Transportation and Communications;
6. Basic, Higher, and Technical Education;
7. Indigenous Peoples' Affairs;
8. Health;
9. Public Works;
10. **Local Government;**
11. Environment, Natural Resources, and Energy;
12. Human Settlements and Development;
13. Science and Technology
14. Agriculture, Fisheries, and Agrarian Reform; and
15. Public Order and Safety

244. The above provisions of the Bangsamoro Organic Law clearly serve as basis for the creation and establishment of the MILG and for the powers and functions it is mandated to exercise.

245. Petitioner cannot cherry-pick and focus on specific parts or Articles of the Bangsamoro Organic Law without looking at and considering the other provisions of the law. After all, it is an elementary rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts.[75]

246. Hence, the Bangsamoro Administrative Code correctly and validly provided for the establishment of the MILG and defined its mandates, powers, and functions.

247. Considering the foregoing, it is erroneous for the petitioner to assert that "interior and local government" is not among the matters over which the Bangsamoro Government has been granted power. Additionally, the public respondents submit that the contention of the petitioner in declaring the entire Title VIII (Ministry of Interior and Local Government) of the BAA 13 or the Bangsamoro Administrative Code unconstitutional is without basis and bereft of merit.

248. The petitioner finally assails the constitutionality of Section 2, Chapter 1, Title VIII of the BAA 13 defining the mandate of the MILG on the general supervision over constituent LGUs as well as Section 3, paragraph G, Chapter 1, Title VIII of the same law on the power of the MILG to enforce disciplinary authority over elective officials.

249. The petitioner disputes the constitutionality of the exercise of general supervision by the BARMM through the MILG over its constituent units on the ground that only the President has the power of general supervision, which cannot be shared with nor be delegated to the autonomous region.

250. On the other hand, petitioner assails the power of the MILG to enforce disciplinary authority over elective officials as void considering that the Local Government Code of 1991 already provides for the jurisdiction over disciplinary actions against elective officials.

251. The contentions of the petitioner are, again, unfounded.

---

[75] *Philippine International Trading Corporation v. Commission on Audit,* G.R. No. 183517, June 22, 2010.

252. The Constitution provides in Article X, Section 4 that the President of the Philippines shall exercise general supervision over local governments. Meanwhile, in Section 16 of the same Article, it is provided that the President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed.

253. The separation of the two provisions relative to the President's power of general supervision is indicative of the differing treatment of such power.

254. This distinctive way of appreciating the application of the President's power of general supervision finds support in the following disquisition in the landmark *Mandanas-Garcia* case, to wit:

> Two groups of LGUs enjoy decentralization in distinct ways. The decentralization of power has been given to the regional units (namely, the Autonomous Region for Muslim Mindanao [ARMM] and the constitutionally-mandated Cordillera Autonomous Region [CAR]). The other group of LGUs (*i.e.*, provinces, cities, municipalities and barangays) enjoy the decentralization of administration. The distinction can be reasonably understood. The provinces, cities, municipalities and barangays are given decentralized administration to make governance at the local levels more directly responsive and effective. In turn, the economic, political and social developments of the smaller political units are expected to propel social and economic growth and development. In contrast, the regional autonomy of the ARMM and the CAR aims to permit determinate groups with common traditions and shared social-cultural characteristics to freely develop their ways of life and heritage, to exercise their rights, and to be in charge of their own affairs through the establishment of a special governance regime for certain member communities who choose their own authorities from within themselves, and exercise the jurisdictional authority legally accorded to them to decide their internal community affairs.[76]

255. The ineluctable conclusion, as such, is that the power of general supervision wielded by the President over LGUs directly, meaning for LGUs outside of autonomous region, is different for the case of LGUs within autonomous regions.

---

[76] *Congressman Hermilando I. Mandanas, et. al. v. Executive Secretary Paquito Ochoa,* G.R. No. 199802, July 3, 2018.

256. In the case of the BARMM, as Congress has devolved the power to regulate the affairs of the constituent LGUs of the Bangsamoro Government, that carried with it the determination of how the general supervision of the constituent LGUs will be exercised.

257. In the questioned provisions of the Bangsamoro Administrative Code, the power of general supervision is lodged with the MILG. This is because at the time that this was in force, the Bangsamoro Parliament has not yet enacted the BAA 49 or the Bangsamoro Local Government Code.

258. It was Muslim Mindanao Autonomy Act No. 25 (MMAA 25) or the ARMM's Local Government Code that was still the prevailing law at that time.

259. This has now been amended with the enactment of BAA 49, otherwise known as the "Bangsamoro Local Governance Code," to wit:

> **SEC. 29.** *Regional Supervision over Local Government Units.* – Consistent with the basic policy on regional autonomy, the Chief Minister shall exercise general supervision over constituent local government units to ensure that their acts are within the scope of their prescribed powers and functions. The Chief Minister shall exercise general supervision directly over provinces, highly urbanized cities, and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to barangays.

260. Finally, the issue that the power of the MILG to enforce disciplinary authority over elective officials is void considering that the Local Government Code of 1991 already provides for the jurisdiction over disciplinary actions deserves scant consideration.

261. The national law Republic Act No. 7160, or the "Local Government Code of 1991," cannot apply in the BARMM.

262. In Section 526 of the 1991 Local Government Code, it is provided:

> **Sec. 526.** *Application of this Code to Local Government Units in the Autonomous Regions.* – This Code shall apply to all provinces, cities, municipalities and barangays in the autonomous regions **until such time as the regional government concerned shall have enacted its own local government code.**

263. As early as 1994, when the ARMM passed its own Local Government Code, the provisions of the 1991 national Local Government Code are no longer deemed applicable within the autonomous region.

264. The same is still true until now.

265. In light of the foregoing, public respondents submit that the allegations of the petitioner to declare unconstitutional Section 2, Chapter 1, Title VIII of the BAA 13 defining the mandate of the MILG on the general supervision over constituent LGUs as well as Section 3, paragraph G, Chapter 1, Title VIII of the same law on the power of the MILG to enforce disciplinary authority over elective officials is without basis.

OPPOSITION TO THE PETITIONER'S URGENT PRAYER FOR THE ISSUANCE OF PRELIMINARY MANDATORY INJUNCTION AND TEMPORARY RESTRAINING ORDER

XII. Petitioner is not entitled to a Writ of Preliminary Mandatory Injunction and Temporary Restraining Order (TRO)

i. Petitioner does not possess a clear and unmistakable right violated by the questioned acts and issuances of the respondents.

266. The petitioner primarily rests his entitlement to the issuance of a TRO and a writ of preliminary mandatory injunction on a disputed and contingent right that is allegedly to be violated as a result of the challenged acts and issuances of the public respondents.

267. Petitioner's contentions fail to convince.

268. Section 3, Rule 58 of the Revised Rules of Court,[77] provides for the grounds for the issuance of injunctive relief. Anent these grounds, the

[77] Section 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:

Court had occasion to lay down the essential requisites for an applicant to be entitled to a writ of preliminary injunction, to wit: (a) **the applicant must have a clear and unmistakable right, that is a right *in esse*;** (b) there is a material and substantial invasion of such right; (c) there is an urgent need for the writ to prevent irreparable injury to the applicant; and (d) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[78]

269. The first requisite for the issuance of a writ of preliminary injunction is the existence of a clear and unmistakable right in favor of the applicant. An injunction, as such, will not issue to protect a right that is not *in esse*, or one that is merely contingent and may never arise. To be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law.[79]

270. In the instant case, the petitioner does not have the right to the issuance of a TRO or writ of preliminary injunction because he does not possess a clear and unmistakable right or a right *in esse.*

271. The right being claimed by petitioner hinges on his assertion that he is the legitimate mayor of the Municipality of Pandag. As discussed thoroughly above, the mayoralty issue is still very much in dispute. In fact, in this very Petition, the petitioner himself raises, as a primary issue, the question of *"[W]hether Petitioner Balayman is the legitimate Mayor of Municipality of Pandag, Maguindanao del Sur."*[80]

272. Furthermore, the issue on the mayoralty of the Municipality of Pandag is yet to be determined by this Honorable Supreme Court in the case docketed as G.R. No. 266443 and by the COMELEC *En Banc* in the

---

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

[78] *DPWH v. City Advertising Ventures Corporation,* G.R. No. 182944, November 9, 2016, citing Marquez v. Sanchez 544 Phil. 507 (2007)
[79] *Heirs of Yu, et al. v. Honorable Court of Appeals, et al.,* G.R. No. 182371, September 4, 2013.
[80] Par. 25-26 of the Petition.

cased docketed as EAC No. 058-2022. This lends further credence to the point that the petitioner's claimed right has not been clearly and unmistakably settled. It remains to be disputed, doubtful, and contingent.

273. Evidently, his claim that he is the legitimate Mayor is far from settled. It remains to be in question. It cannot therefore be considered as a source of right that is already present nor unmistakable as to warrant injunctive relief in his favor.

274. In *Spouses Nisce v. Equitable PCI Bank,* the Supreme Court discussed the requisites for issuing a writ of preliminary injunction, with the following instructive pronouncements, *viz.*:

> The plaintiff praying for a writ of preliminary injunction must further establish that he or she has a present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages. In the absence of proof of a legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified. **Thus, where the plaintiff's right is doubtful or disputed, a preliminary injunction is not proper.**[81] (emphasis ours)

275. In *Bicol Medical Center, et al v. Botor*, as regards the absence of or failure to establish the requisite right *in esse* in the issuance of preliminary injunction, the High Court succinctly reiterated that, "Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief."[82]

276. As there exists no clear legal right *in esse* upon which the petitioner can validly anchor his application for preliminary mandatory injunctive relief, the claim of intrusion or violation and injury must necessarily fail.

ii. Petitioner also failed to prove that he will sustain grave and irreparable injury from the questioned act or issuance.

---

[81] *Spouses Nisce v. Equitable PCI Bank,* G.R. No. 167434, February 19, 2007.

[82] *Bicol Medical Center, et. al. v. Botor, et. al.,* G.R. No. 214073, October 4, 2017, citing *Executive Secretary v. Forerunner Multi Resources, Inc.,* 701 Phil 64 (2013).

277. Aside from failing to establish the presence of a right *in esse*, the petitioner also miserably fails to prove that he will sustain any injury.

278. Specifically, the petitioner failed to demonstrate that he will be irreparably harmed in the absence of the TRO and or injunction.

279. Petitioner must demonstrate that irreparable harm is likely and not just probable. This does not appear in the averments made by him in paragraphs 164-178 of the petition.

280. The very purpose of a TRO and/ or a Writ of Preliminary Injunction is to maintain the status quo and prevent any undue harm upon the party seeking its protection.[83] However, in this case, no great and irreparable injury will be suffered by the petitioner before the matter can be heard on notice.

281. In sum, the petitioner failed to establish that he will be irreparably prejudiced or that he meets the requirements for the granting of the application for a TRO or a writ of preliminary mandatory injunction. Therefore, the Honorable Supreme Court should deny the same.

iii. The issuance of a TRO or a writ of preliminary injunction would operate as a prejudgment of the case.

282. In determining whether or not petitioner is entitled to the issuance of injunctive relief, this Honorable Court would have to pass upon the inevitable issue of whether the questioned Memoranda, Certifications, and Official Communications are constitutional. This is because petitioner's prayer for TRO hinges on his alleged rights as legitimate Mayor which would be violated supposedly by the continued disregard of the law by the public respondents.

283. In *Searth Commodities Corporation, et al. v. Court of Appeals*, this Honorable Court warned the courts that a premature issuance of an injunction may result in the virtual acceptance of the claimant's main claim, to wit:

> The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. In the case at bar, if the lower court

[83] *Bureau of Customs v. Court of Appeals,* G.R. No. 192809, April 26, 2021.

issued the desired writ to enjoin the sale of the properties premised on the aforementioned justification of the petitioners, the issuance of a writ would be a virtual acceptance of their claim that the foreclosure sale is null and void. There would in effect be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are inceptively bound to prove. [84]

284. In *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, this Honorable Court denied the prayer for TRO because "no injunctive writ could be issued pending a final determination of petitioner's actual and existing right over the property. The grant of an injunctive writ could operate as a prejudgment of the main case." [85]

285. Hence, in deciding whether the petitioner is entitled to injunctive relief, this Honorable Court would have to pass upon the constitutionality of the questioned issuances and acts of the public respondents. Indeed, the issuance of a TRO or a writ of preliminary injunction would operate as a prejudgment of the case.

286. Finally, courts must exercise utmost caution, prudence and judiciousness in the issuance of temporary restraining orders and injunctive writs. The issuance of a writ of preliminary injunction is an extraordinary peremptory remedy available only on grounds provided by law.[86] There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. The writ should not be granted lightly or precipitately, but only when the court is fully satisfied that the law permits it and the emergency demands it.[87]

287. In the absence of the most essential preconditions for the issuance of an injunctive relief, petitioner's prayer for the issuance of a TRO and writ of preliminary mandatory injunction and/or other injunctive reliefs must be denied.

---

[84] *Searth Commodities Corporation, et al. v. Court of Appeals,* G.R. No. 64220. March 31, 1992.
[85] *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation,* G.R. No. 207938, October 11, 2017.
[86] *Valley Trading v CFI, et al.*, G.R. No. L-49529, March 31, 1989.
[87] *PPSB v CA, et al.,* G.R. No. 194672, March 6, 2019.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court to:

1. **NOTE** this Comment;

2. **DENY** petitioner's prayer for the issuance of a temporary restraining order and writ of preliminary mandatory injunction; and

3. **DENY** due course to and **DISMISS** the Petition for utter lack of merit.

Public respondents also ask for other forms of relief that the Court may deem just and equitable under the premises.

RESPECTFULLY SUBMITTED.

February 19, 2024, Cotabato City for Manila City.

BANGSAMORO ATTORNEY GENERAL'S OFFICE
Counsel for BARMM
Office of the Chief Minister
Bangsamoro Autonomous Region in Muslim Mindanao
Bangsamoro Government Center, Gov. Gutierrez Ave.,
Rosary Heights VII, Cotabato City
By:

ATTY. ANNA TARHATA S. BASMAN
Roll of Attorneys' No. 61311
IBP OR No. 384704; RSM; January 2, 2024
MCLE Compliance No. VII-0031280; April 14, 2025

ATTY. FARIZAH JOY P. BAGUNDANG
Roll of Attorneys' No. 70489
PTR No. 9964774; January 2, 2024; Cotabato City
IBP OR No. 374529; December 26, 2023; Pasig City
MCLE Compliance No. VII-0006147; April 14, 2025

ATTY. JOHAIRA E. SANGGOYOD
Roll of Attorneys' No. 67659
PTR No. 1284423; Iligan City; January 19, 2024
IBP No. 46885; Pasig City; January 8, 2024
MCLE Compliance No. VII- 0007516; April 14, 2025

ATTY. JONAIFA T. ABDULRAHIM
Roll of Attorneys No. 67585
PTR No.: 9964055; Cotabato City; January 03, 2024
IBP OR No. 406875; Pasig City January 8, 2024
MCLE Compliance No. VII- 0006168; April 14, 2025